IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2453 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

VASRAMBHAI LAXMANBHAI

Appearance:

1. Special Civil Application No. 2453 of 2002

MS REETA CHANDARANA, AGP for Petitioner No. 1

MS VS VINAYAK or Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 09/09/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged the award dated 12.1.01 passed by the Labour Court, Surendranagar by which reference of the

respondent-workman was allowed partially and the termination of the respondent dated 12.1.93 was declared illegal and the respondent was directed to be reinstated in service with 20 per cent backwages.

2. The learned AGP, Ms.Chandarana has contended that in view of the Full Bench decision of this Court reported in 2004 (2) G.L.H. 302 (Gujarat Forest Producers, Gatherers and Forest Workers Union v. State of Gujarat), it is necessary to examine whether the unit in which the respondent was employed fulfills the triple test laid down so as to bring the activities carried on within the meaning of the term "industry" for the purpose of Industrial Disputes Act or not. It is pointed out that the Full Bench in the above decision has observed that the question whether any of the unit, establishment or undertaking of the Forest and Environment Department is an industry or not will depend upon the nature of work done by such entity and only when the activity undertaken amounts to an activity for production or distribution of goods and/or services for satisfying wants and desires of consumers, in the sense in which the concepts are understood in the field of industrial economy, satisfying the third ingredient of the triple ingredients test, that such unit, establishment or undertaking can be said to be an industry. The following observations of the Full Bench can be reproduced:

"Que-1 "Whether the Forest Department and the Irrigation Department of the State can be said to be an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not?

Que-2 Whether Forest Department of the "State" is an industry or not?

Ans-(i) The Forest and Environment Department of the State Government is not an industry under Section 2(j) of the Industrial Disputes Act, 1947 and the question whether any of its unit, establishment or undertaking is an industry or not will depend upon the nature of the work done by such entity and only when the activity undertaken amounts to an activity for production or distribution of goods and/or services for satisfying wants and desires of consumers, in the sense in which the concepts are understood in the field of industrial economy, satisfying the third ingredient of the triple ingredients test, that such unit, establishment or undertaking of the Department can be said to

be an industry, unless falling in the categories removed by constitutional and competently enacted legislative provisions from the scope of the Industrial Disputes Act as indicated in clause (c) of Item IV of the guidelines laid down by the Supreme Court in paragraph 161 of Bangalore Water Supply case (supra), including the law falling under Articles 309 to 311 of the Constitution."

3. The learned AGP points out that the Labour Court in its impugned award has not considered any of these aspects mentioned above before setting aside the termination of the respondent-workman on the ground of violation of the provisions of section 25-F, G and H of the Industrial Disputes Act. She, therefore submits that the matter is required to be remanded to the Labour Court for fresh consideration, including the question whether the respondent-workman was engaged in any unit of the Department which satisfied the triple tests so as to be characterised as industry.

4. The learned advocate for the respondent does not seriously oppose to this contention. She, however, points out that by various orders, this Court had directed the petitioner to pay the respondent-workman the benefits under section 17-B of the Industrial Disputes Act, but despite repeated orders, the workman has not received the benefits under section 17-B after September 2002. Learned AGP appearing for the petitioner does not have specific instructions in this regard. Suffice to observe that if this contention of the respondent is correct, the action of the petitioner cannot be approved. It is, therefore, directed that the petitioner shall pay to the respondent-workman all the outstanding benefits under section 17-B of the Industrial Disputes Act till today within a period of four week from now.

5. In conclusion, I find that the award of the Labour Court is required to be set aside and is hereby set aside and the matter is remanded to the Labour Court for fresh consideration including for deciding the question whether the respondent was engaged in any unit or establishment which satisfied the required parameters to bring the same within the definition of the term "industry" as defined under the Industrial Disputes Act. The said question may be decided after permitting both the sides to lead evidence afresh and applying the tests laid down by various decisions and in particular the Full Bench decision as aforesaid and keeping in mind the observations set out hereinabove.

6. In the result, the petition succeeds in part. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)